A photograph of the San Francisco Ferry Building, a large, historic, light-colored stone building with a prominent clock tower. The building features a series of arches along its side and a large clock face on the tower. The sky is clear and blue. In the foreground, a paved walkway leads towards the building, with a few people walking. To the left, there are trees and a street with some vehicles. The overall scene is bright and clear.

Federal Historic Rehabilitation Tax Credit Program

Recommendations for Making a
Good Program Better

September 2006

A National Park System Advisory Board Report

National Park System Advisory Board



The following report of the National Park System Advisory Board Committee on the Federal Historic Rehabilitation Tax Credit Program was adopted unanimously by the Board on September 15, 2006.

MEMBERS PARTICIPATING

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Larry Rivers
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Committee on the
Federal Historic Rehabilitation Tax Credit Program

Report to the National Park System Advisory Board

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Hotel Burnham, Chicago, IL

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Hotel Monaco, Washington, DC

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Preface

The first Federal tax incentives for the rehabilitation of historic buildings were created by the Tax Reform Act of 1976 to encourage the preservation of historic buildings by promoting private investment in historic buildings. The law, and subsequent modifications, makes Federal tax incentives available to “certified rehabilitations,” which are defined as “any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary [of the Treasury] as being consistent with the historic character of such property or the district in which such property is located.” The definition of a “certified rehabilitation” in the law requires the Secretary of the Interior to certify that rehabilitations undertaken for the tax incentives are consistent with the historic character of the property and that only rehabilitations that are consistent with a property’s historic character qualify for the tax incentives. The Secretary of the Interior delegated this responsibility of certifying rehabilitations that are “consistent” with a property’s historic character to the National Park Service, which has managed the Federal Historic Rehabilitation Tax Credit Program since it was created. The Federal Historic Rehabilitation Tax Credit Program is administered by the National Park Service (NPS) and the Internal Revenue Service (IRS) in partnership with the State Historic Preservation Officers (SHPOs).

Two recent reports prepared by participants in this program called on the NPS to consider possible improvements in the program. *Tax Act Review Reform Policy Paper* (June 2003), issued by the National Conference of State Historic Preservation Officers (NCSHPO), recommended “reforms to the Tax Act Review process conducted between the individual states and the National Park Service (NPS) in order to improve the review process, to clarify the roles in the review

process, to streamline reviews and to apply the Standards in a consistent and direct manner.” *Recommendations for Improving Administration of the Certified Historic Rehabilitation Tax Credit Program*, issued December 29, 2003, by the Historic Preservation Development Council (HPDC), contained recommendations “for improving the federal historic rehabilitation tax credit program by making it more sensitive to the realities of the real estate development process.”

The National Park Service responded to these two reports in August 2004 with a report entitled *Improving the Administration of the Federal Historic Rehabilitation Tax Credit Program*. In this report the NPS agreed to carry out a number of tasks aimed at improving the project review process and enhancing training for project sponsors and reviewers. For an examination of policy-level issues, the NPS also agreed to “establish a committee of the National Park System Advisory Board to be made up of appointees broadly representative of all those who have a professional interest in what the Secretary’s Rehabilitation Standards say and how they are interpreted.” With its 30th anniversary approaching, the Director suggested that now



Palace of Florence, Tampa, FL

would be an appropriate time to reexamine the program, which has been successful since its inception, to ensure that it is utilized to the fullest extent and that it is still providing the best possible service to the public.

The Director asked the Committee to study the following questions: (1) "Are the requirements of the Federal Historic Rehabilitation Tax Credit Program clear to program users? Do program users have realistic expectations when they undertake projects? If the process is not clear, how can it be made clearer?" and (2) "How can the interpretation of the Secretary of the Interior's Standards for Rehabilitation be made

more user-friendly so that program users and the preservation community can better understand them?"

Committee members participated in a preliminary conference call on August 9, 2005. The Committee met twice, in Washington, DC, October 18-19, 2005, and in San Francisco, CA, December 7-8, 2005, to hear presentations from State Historic Preservation Officers (SHPOs), the Internal Revenue Service, developers and preservation professionals, and then to develop its recommendations.



Berkeley Mill Housing, Cumberland, RI

Summary of Findings and Recommendations

The Committee finds that the Federal Historic Rehabilitation Tax Credit Program has been very successful in leveraging private investment in historic buildings, preserving historic resources, stimulating economic growth, creating housing and revitalizing communities. The changes proposed by the Committee will provide greater ease and clarity for applicants to meet the program's requirements as well as help expand the benefits of historic preservation and economic development. In accordance with the two questions posed by the Director, the Committee's findings and recommendations for improving the program are organized into two categories: Application of the Secretary of the Interior's Standards for Rehabilitation and Improving the Process.

Application of the Standards

1. The Committee recognizes the inherent tension in carrying out a program that seeks to accommodate more than one public policy goal. The Committee also recognizes the inherent tension in seeking to balance the goals of historic preservation with the ever-increasing market pressures for more intense use of land and buildings. The Committee finds that the Secretary of the Interior's Standards for Rehabilitation remain appropriate for addressing this inherent tension, and therefore recommends that there be no change to them.

2. The Committee finds that the Federal Historic Rehabilitation Tax Credit Program's application of the Standards is already marked by considerable flexibility to address this inherent tension. Nevertheless, the Committee finds that in some cases reconciling interpretation of the Standards with other public policy goals, such as smart growth, energy efficiency, and affordable housing, can be problematic. The Committee finds further that in some cases reconciling interpretation of the Standards with market pressures inherent in large and complex projects or in projects where a building's historic function, design or condition makes adaptive use especially difficult can be problematic.

The Committee recommends that the NPS, in consultation with its historic preservation partners, reexamine and revise as appropriate its interpretation of the Standards in order to provide some greater measure of flexibility in addressing especially challenging projects. The NPS review should focus in particular on windows, interior treatments, new additions and related new construction, modern-day requirements, life safety requirements, energy efficiency improvements, green building features and use of new technologies and materials.

3. The Committee finds that in some cases the NPS interpretation of individual treatment issues such as window replacement, interior alterations, new



*The Prizery/
R.J. Reynolds
Tobacco Warehouse,
South Boston, VA*

construction, and new building technologies is unclear. There is also a lack of accessible guidance concerning the significant flexibility that already exists in the program to meet today's challenges. This lack of clarity has led to uncertainty and errors on the part of project designers.

The Committee recommends that the NPS, in consultation with its historic preservation partners, revise and expand its current guidance materials as appropriate, so that the NPS interpretation of the Standards is clearer to project designers, and so that the outcome of the NPS review is more predictable.



Legion Building, Spokane, WA

4. The Committee finds that there is a high level of consistency between the NPS and SHPOs in the interpretation and application of the Standards. However, in an approval process that requires review at two levels of government and that involves multiple and constantly changing individual project reviewers, examples of lack of clarity, inconsistency and professional disagreements are inevitable.

The Committee recommends that the NPS, in consultation with its historic preservation partners, review and enhance its existing training sessions and materials and enhance and refine guidance in an effort to provide the highest possible level of clarity and consistency among all project reviewers in their application of the Standards.



The Committee further recommends that, during its review of particularly complex projects, the NPS ensure the fullest communication with state staffs, so as to foster consistency and to ensure that SHPOs have adequate opportunity to participate by phone or in person in the review process.

Improving the Application Process

5. The Committee finds that the “learning curve” for how to negotiate the application process successfully is steep. There is much for an applicant to know concerning both the requirements and the flexibility of the Standards, when to file an application, and even how to prepare the application form and supplementary materials.

The Committee recommends that the NPS, in consultation with its historic preservation partners, review and enhance its guidance materials to make those materials and the application process, itself, more accessible and user-friendly to first-time users and small project owners. In particular, the Committee recommends that the NPS continue to emphasize the importance of early involvement of the NPS and the SHPO in project planning, and that the NPS promote more widely the use of “preliminary consultation” on complex and difficult projects.

6. The Committee finds that large and complex projects can involve problematic treatment issues, and that coming to a successful resolution of those issues very often benefits from a site visit involving SHPO or NPS staff. The Committee finds further that the current level of program funding allows for few visits to project sites. Finally, the Committee finds that large project sponsors would willingly pay increased fees in return for improved service from SHPOs and the NPS.

The Committee recommends that the NPS investigate how increasing and restructuring the fees charged to process Historic Preservation Certification Applications could facilitate and expedite review of project applications. The

Committee recommends that this investigation include mechanisms for sharing some portion of fee revenues with SHPOs.

7. The Committee finds that the current NPS policy for review of rehabilitation work within functionally-related, multiple-building complexes in single ownership inhibits use of the tax credit program for phased projects and for projects carried out by multiple long-term lessees on buildings within the complex. Current policy makes tax credits for such individual projects within the complex dependent for five years upon acceptability of any other rehabilitation work done elsewhere in the complex.

The Committee recommends that the NPS, in consultation with its historic preservation partners, reevaluate and revise its current policy to lessen the dependence of projects within such a complex on each other for purposes of eligibility for the tax credits.

The Committee recommends that the actions identified in this report be addressed immediately in order that they may be implemented by December 2007.

* * * * *

The Committee finds that the program will be improved by implementing the items previously identified in the NPS report *Improving the Administration of the Federal Historic Rehabilitation Tax Credit Program: The National Park Service Response to Recommendations for Improvement*, August, 2004. The Committee recommends that the NPS complete implementation of these items as quickly as possible. Finally, the Committee finds that changes to the Tax Code, as currently proposed by the National Trust for Historic Preservation and others, would also serve to enhance the program and encourage more projects. The Committee acknowledges, however, that such changes are beyond its official purview.

*Arabella Bus Barn
New Orleans, LA*



FINDINGS, RECOMMENDATIONS AND DISCUSSION



*Aldridge Hotel, Shawnee, OK
Lobby before and after rehabilitation*



FINDINGS, RECOMMENDATIONS AND DISCUSSION

The Committee finds that the Federal Historic Rehabilitation Tax Credit Program has been very successful in leveraging private investment in historic buildings, preserving historic resources, stimulating economic growth, creating housing and revitalizing communities. Since the inception of the program in 1976 over \$36 billion in private investment in historic buildings has been generated, involving over 32,800 approved projects. In FY 2005 alone more than \$3.1 billion in private investment was leveraged in 1,101 approved projects. These projects included the creation of 4,863 low- and moderate-income housing units, with a total of 14,354 housing units created or rehabilitated overall. The economic benefits of these projects include creation of jobs, revitalization of older communities, and generation of new tax revenue for localities, state, and the federal government. The heritage benefits of these projects are the preservation and rehabilitation of historic buildings and neighborhoods that embody our nation's history and define the unique character of local places.

The changes proposed by the Committee will provide greater ease and clarity for applicants to meet the program's requirements and help expand the benefits of historic preservation and economic development. As the program has evolved, new historic rehabilitation issues have emerged, the scope of some projects has expanded, and rehabilitated historic buildings have become key parts of contemporary real estate development in many communities. These developments along with new directions in marketing rehabilitated properties were instrumental in the Director's decision to appoint this Committee to take a fresh look at and to reevaluate the policies of this 30-year-old program. In accordance with the questions posed by the Director, the Committee's findings and recommendations for improving the program are organized into two categories: Application of the Secretary of the Interior's Standards for Rehabilitation and Improving the Process.

Application of the Standards

1. The Committee recognizes the inherent tension in carrying out a program that seeks to balance the goals of historic preservation with the ever-increasing market pressures for more intense use of land and buildings. The Committee finds that the Secretary of the Interior's Standards for Rehabilitation remain appropriate for addressing this inherent tension, and therefore recommends that there be no change to them.

The Secretary of the Interior's Standards for Rehabilitation are the criteria used by the National Park Service to certify rehabilitation projects for the Federal Historic Rehabilitation Tax Credit program. The Standards for



Sherman Perk, Milwaukee, WI



American Can Company, New Orleans, LA



Rehabilitation were first published in 1977 along with Guidelines for Rehabilitating Historic Buildings that were developed by the NPS to help program users interpret the Standards. The Standards were created as a distillation and codification of an already large body of knowledge concerning best practices in the treatment of historic buildings. In the years since then, the technical body of knowledge has continued to expand and inform practitioners, but the Standards have remained the appropriate expression of good preservation practice.

The *Standards* have gained acceptance throughout the preservation community and at all levels of government. They have been adopted by state and local preservation programs all across the country to guide their efforts.

There is also a consensus among current users of the Historic Rehabilitation Tax Credit Program that the Standards for Rehabilitation can accommodate virtually all project requirements, including code-required issues. Consequently, there is no basis at this time for amending the Standards.

2. The Committee finds that the Federal Historic Rehabilitation Tax Credit Program's application of the *Standards* is marked by considerable flexibility. Nevertheless, the Committee finds that in some cases reconciling interpretation of the *Standards* with other public policy goals, such as smart growth, energy efficiency, and affordable housing, can be problematic. The Committee finds further that in some cases reconciling interpretation of the *Standards* with market pressures that are part of large and complex projects or in projects where a building's historic function or design makes adaptive use especially difficult can be problematic.

The Committee recommends that the NPS, in consultation with its historic preservation partners, reexamine and revise as appropriate its interpretation of the *Standards* in order to provide some greater measure of flexibility in addressing especially challenging projects. The NPS review should focus in particular on windows, interior treatments, new additions and related new construction, modern-day requirements, and use of modern technologies and materials.

Windows. One of the most common and frequently encountered rehabilitation challenges involves windows, because windows are almost always important character-defining features

of historic buildings. The recommended rehabilitation treatment for any character-defining feature of a historic building, according to the *Standards*, is always to retain and repair



Tide Point, Baltimore, MD

the feature. If the feature is too deteriorated to repair, it may be replaced in kind to match the historic feature or, in some instances, it may be replaced with a compatible substitute material. The Committee recognizes that certain types of windows should be preserved if possible, and replacements if necessary should match historic materials and design. Examples include windows that are highly decorative or that have a unique or distinctive design or material; early-period windows in which the craft details of wood sash are important in defining the building's historic character; and many small-scale buildings where sash may be viewed close at hand and non-historic details would be readily apparent.

However, the windows in many historic buildings are not notably distinctive or unique and, for this reason, in specific circumstances, the Committee believes replacement should be allowed, even if the windows are repairable. Examples include larger scale buildings that contain hundreds or even thousands of windows and tall buildings where most windows are viewed at a distance and details are not easily perceived.

Even when property owners and developers would like to retain and repair existing windows, there may be factors that require that the windows must be replaced. For instance, in hurricane-prone areas, building codes mandate that if existing windows cannot meet certain requirements they must be replaced with new hurricane-resistant windows in rehabilitation projects. Other factors that may determine the feasibility of retaining historic

windows include: the cost to properly repair historic windows and future maintenance costs on large-scale buildings; and the need for window operability, energy efficiency and noise control in former industrial and commercial buildings that are converted to residential use.

The NPS should review and revise, in consultation with its historic preservation partners, its existing policy to ensure that it is sufficiently flexible concerning replacement windows when windows are missing, too deteriorated to repair or, when, for other compelling reasons, it is not feasible to retain the existing windows. As a result of its review, the NPS should develop written and web-based policy guidance, as needed, that offers more options for window replacement and when, under specific circumstances, existing windows may be replaced, and what kind of replacement windows will meet the *Standards*. This expanded policy should address the various factors involved in window performance, including cost, functionality for building occupants, energy and sustainability and evaluation of new window technology.

Interior Treatments. Interiors are important in defining the character of historic buildings. Interior treatments of historic buildings are problematic in some rehabilitation projects. While there is general agreement on the need to repair and retain character-defining materials and spatial arrangements in the principal interior spaces



West Baden Springs Resort, West Baden Springs, IN

of a building, an expanded policy on treatment of secondary spaces that would permit more change to less significant secondary spaces would make the program more useable for a larger constituency of property owners and developers. The NPS should, in consultation with its historic preservation partners, expand its policy to allow more change to less significant, secondary interior spaces, and develop written and web-based guidance on this issue.

New Additions and Related New

Construction. New additions and rooftop additions to historic buildings and related new construction in a rehabilitation project are problematic issues. The Committee acknowledges that real estate land values often mean that new additions and new construction are necessary to ensure the economic success of a rehabilitation project. The NPS should, in consultation with its historic preservation partners, examine its existing guidance regarding new additions and related new construction to provide maximum flexibility that is consistent with the *Standards* to meet market pressures. As part of this effort, the NPS should provide more guidance on compatible new construction on the site of or adjacent to a historic building.

Modern-day Requirements and New Technology.

The *Standards* are flexible with regard to meeting certain code-mandated alterations. Most modern-day requirements for rehabilitation projects can be accommodated within the *Guidelines*. However, NPS policy guidance does not sufficiently address how rehabilitation projects could accommodate more environmentally sensitive treatments and make use of more new building products and materials while meeting the *Standards*.

To better accommodate modern-day requirements, the NPS should revise its policy guidance to include more environmentally sensitive treatments, as well as new building products and materials, in rehabilitation projects. The expanded guidance should address the following: new substitute materials; hazardous materials abatement; ADA (Americans with Disabilities Act) and life-safety requirements; upgrading historic properties to meet seismic standards; improving energy efficiency; rehabilitating historic properties as “green” buildings; and achieving LEED (Leadership in Energy and Environmental Design) certification.



W.P. Fuller Paint Company Office & Warehouse, Salt Lake City, UT

3. The Committee finds that in some cases the NPS interpretation of individual treatment issues such as window replacement, interior alterations, new construction, and new building technologies is unclear. There is also a lack of accessible guidance concerning the significant flexibility that already exists in the program to meet today's challenges. This lack of clarity has led to uncertainty and errors on the part of project designers.

The Committee recommends that the NPS, in consultation with its historic preservation partners, review, revise and enhance its guidance materials as appropriate, so that the NPS interpretation of the Standards is clearer to project designers, and so that the outcome of the NPS review is more predictable.

The goal of the program is generally summarized in the definition of "rehabilitation" as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values." The fact that rehabilitation, as a treatment, allows some changes to be made to a historic building that are necessary to accommodate the new use may not be understood by everyone, including project reviewers.

To clarify the inherent flexibility in the program, the NPS, in consultation with its historic preservation partners, should develop and publish more printed and web-based guidance that explains the broad scope of rehabilitation treatments that the program allows, including technical guidance regarding conservation treatments for historic buildings, and guidance

on interpretation of the *Standards*. The NPS should establish written policy guidance to enable SHPOs and program users to understand how the NPS evaluates the "cumulative effect" of a rehabilitation project that overall conforms to the *Standards*, but that cannot fully implement some of the "recommended treatments" described in the *Guidelines for Rehabilitating Historic Buildings*. Guidance should focus on and explain the thought process in project review that allows a finding that the project as a whole meets the *Standards* and that the program provides an incentive to "rehabilitate" and not to "restore" historic properties.

Specific Treatment Issues

To clarify its policy on windows, the NPS should develop written guidance, with illustrated examples, that explains the inherent flexibility in the program regarding historic windows in

rehabilitation projects, including when replacement is acceptable and what visual qualities replacement windows must convey in order to meet the *Standards*.

The NPS should define and clarify what constitutes a secondary space in a historic building. NPS guidance should focus on the public purpose of the program in its discussion of primary and secondary spaces, giving most attention to those features that preserve the public experience and memory of the building.



Necco Factory, Cambridge, MA

The NPS revised guidance should avoid definitive statements about how much change can be allowed in corridors, repetitive floor plans in high-rise buildings, and whether the floor plan/corridor configuration always has to be retained on all the upper floors in multi-story buildings. NPS guidance and training efforts should help program users to identify inherently beautiful, valuable or unique architectural features in non-public spaces, including structural and mechanical elements, that are important to retain.

Because the NPS may not recommend or prescribe the design for new additions and new construction, the guidance provided in the *Standards* and *Guidelines* is general. The *Standards* and *Guidelines* provide basic guidance regarding such factors as size and scale for “compatible” new additions to historic buildings and related new construction. The concept of compatibility is not always clear to program users, nor is it clear how large a new or rooftop addition may be or how much new construction may be added to a site without compromising the building’s historic character.

To achieve greater consistency in the review of new construction, the NPS should examine how it reviews proposed new and rooftop additions and related new construction, and their impact on the historic building to ensure that the *Standards* are applied consistently. The NPS should establish written policy that clarifies and explains the flexibility in its existing program guidance regarding “compatible” new additions to historic buildings and related new construction. The NPS should develop and provide more written and web-based guidance, with examples, to illustrate “compatible” new additions and “compatible” new construction. Examples should be chosen to ensure that a wide range of design options is presented.



Alicia's Place, Duluth, MN



4. The Committee finds that there is a high level of consistency between the NPS and SHPOs in the interpretation and application of the *Standards and Guidelines*. However, in an approval process that requires review at two levels of government and that involves multiple and constantly changing individual reviewers, examples of inconsistency and professional disagreements are inevitable.

The Committee recommends that the NPS enhance and augment its existing training sessions and materials, in an effort to provide the highest possible level of consistency among all project reviewers in their application of the *Standards and Guidelines*. The Committee further recommends that, during its review of particularly complex or sensitive projects, the NPS ensure the fullest communication with state staffs, so as to foster consistency and to ensure that SHPOs have adequate opportunity to be included in the review process.

Final NPS decisions are in accordance with SHPO recommendations over 80 percent of the time. While this level of agreement is commendable, there remain nearly 20 percent of projects in which the applicant receives a final answer from the NPS that is to some degree different from what the SHPO recommended. In most cases, the difference is that the NPS adds one or more conditions for approval beyond whatever conditions the SHPO may have recommended for approval. Only very rarely does the NPS deny certification where the SHPO has recommended approval.

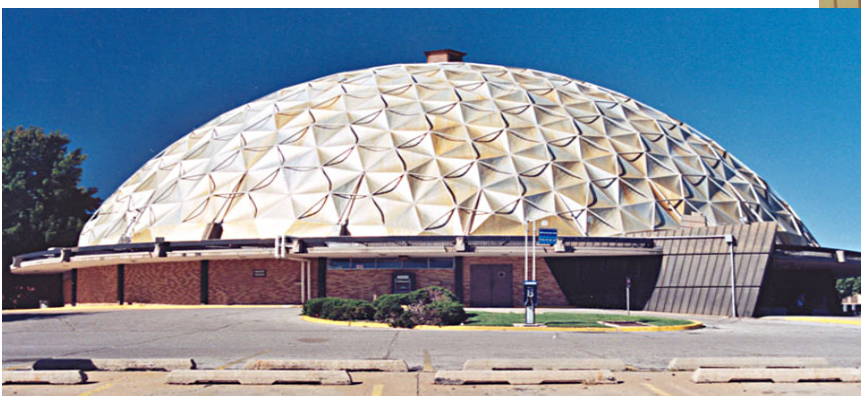
The committee heard from presenters that they felt in some cases SHPO staffs had not consulted in a timely manner with the NPS, so that when projects came to the NPS there was need for refinement or retention of more physical fabric than the owner had been led to believe by the state. Several presenters mentioned that in some regions of the country there are very few trained consultants who are familiar with the requirements of the Federal Historic Rehabilitation Tax Credit Program.

In addition, the majority of states review fewer than 10 tax credit projects each year, so that the opportunities to become well-practiced in the program can be limited. Finally, there is sufficient turnover among state staffs to ensure that there

will always be relatively inexperienced staff administering the program somewhere.

Currently the NPS offers biennial training for all SHPO staff and one-time training for new project reviewers in the State Historic Preservation Offices. Approximately 10 new state reviewers are given a three-day orientation and training by NPS in Washington, DC, each year. Not all new state reviewers can attend. In some cases, state staffs are not permitted to come to Washington, DC, due to travel restrictions imposed statewide, so training for them must wait until an NPS project reviewer is traveling to the state. At the biennial training for SHPO staff generally half of the attendees may be new to project review and only minimally familiar with the program. Many of them have never had any NPS training or have only attended the three-day orientation training.

In short, maintaining the current level of consistency between the NPS and the SHPOs requires an ongoing commitment to providing training at least as often and as intensive as the current effort. Striving for greater consistency will require an increased level of effort and greater outreach to all participants in the program.



Citizen's Bank, Oklahoma City, OK

Currently, the NPS offers additional training through national forums, such as the annual meetings of the National Trust for Historic Preservation, the American Institute of Architects and statewide preservation organizations. However, much of this training is tied to other conference objectives and is very short in duration. Since most states mandate annual continuing education for design professionals, the NPS should work on outreach to state architectural review boards and also to the purveyors of the courses themselves, to ensure that training on all aspects of the historic tax credit program is made available.

In order to increase consistency in decision-making, the NPS should look at both short-term and long-term training of project reviewers and consultants. This training should be supplemented

with more published and web-based guidance on interpretation of the *Standards*, including "Interpreting the Standards" Bulletins. In addition, the NPS should investigate how to provide funding to allow more frequent trips to review projects on site with SHPO staff, owners and consultants. The NPS should undertake training not only of SHPO staff, but also develop training sessions with the SHPO for consultants, applicants, city officials and others who might benefit from learning more about the *Standards*, the application process and best practices in preservation.

NPS and SHPO staff who work with the program should also be encouraged to expand their knowledge of the development process to ensure that they are able to provide more informed service to program users.



500 Block West
Fillmore,
Phoenix, AZ

Improving the Application Process

5. The Committee finds that the “learning curve” for how to negotiate the application process successfully is steep. There is much for an applicant to know concerning both the requirements and the flexibility of the *Standards*, when to file an application, and even how to prepare the application form and supplementary materials.

The Committee recommends that the NPS, in consultation with its historic preservation partners, review and enhance its guidance materials to make those materials and the application process more accessible and user-friendly to first-time users and small project owners. In particular, the Committee recommends that the NPS continue to emphasize the importance of early involvement of the NPS and the SHPO in project planning, and that the NPS promote more widely the use of “preliminary consultation” on complex and difficult projects.

Major developers who do primarily large projects and who use the tax credit program regularly have the resources and experience to deal with the program’s administrative requirements. However, the overwhelming majority of applicants are first-time users who expect to use the process only once, and who may be undertaking relatively small projects. There is not enough guidance material specifically for inexperienced developers, smaller projects, or property owners in smaller, rural communities across the country. As a result, applications may be incomplete, resulting in time-consuming requests from the SHPO or the NPS for additional information; applications may be submitted well after work has begun, greatly decreasing the opportunity to avoid or correct inappropriate treatments.

For example, the *Secretary of the Interior’s Standards for Rehabilitation* focus on preserving “character-defining features.” Yet, some first-time program users may not understand character-defining features and may have difficulty identifying them in their historic buildings. Because an understanding of character-defining features is essential to the success of a rehabilitation project in this program, the NPS should develop more illustrated, written and web-based guidance featuring examples of character-defining features to help applicants evaluate their historic buildings and plan their rehabilitation projects. NPS

guidance should stress that projects are reviewed on their overall success in complying with the Secretary’s *Standards*, so that first-time users in particular are aware that project evaluation strives for a good project, not a perfect project.



Groton General Store, Groton, VT

Some potential applicants may find the process confusing and burdensome to the point that they are discouraged from applying. Some potential users of the program are not aware of the program, and some do not participate due to a lack of understanding or a misperception about the program. Others do not submit applications because they do not know whom to contact for information and are unable to get professional guidance locally. More education, technical

assistance and a facilitated application process could encourage owners of smaller, historic, income-producing properties to take better advantage of this incentive.

A “preliminary consultation” is an informal meeting among the NPS, the SHPO and the project sponsor prior to submission of a formal application. In the past, such meetings have been held when the SHPO has been working with a project sponsor and finds that some major treatment issue would benefit from discussion with the NPS before project planning proceeds any further. Preliminary consultation, thus, has

been specific to that issue and is advisory. These preliminary meetings can be very helpful in guiding the subsequent development of project plans and should be routinely available to project sponsors and design teams that request them. The agenda for preliminary consultations should be limited to key issues agreed upon by the project development team, the SHPO and the NPS. Because the option of such preliminary meetings is not widely known, the NPS should take steps to make sure that project sponsors, design teams and contractors know that such meetings can be requested.

6. The Committee finds that large and complex projects can involve very difficult treatment issues, and that coming to a successful resolution of those issues very often would benefit from a site visit involving SHPO or NPS staff. The Committee finds further that the current level of program funding does not allow for site visits to as many projects as would benefit from such an on-site meeting. Finally, the Committee finds that large project sponsors would willingly pay increased fees for timely and responsive service from SHPOs and the NPS.

The Committee recommends that the NPS investigate how increasing and restructuring the fees charged to process Historic Preservation Certification Applications could enhance service and facilitate and expedite review of project applications. The Committee recommends that that this investigation include mechanisms for sharing some portion of fee revenues with the SHPOs.

There is consensus among developers that the overall success of the program, as well as the success of individual rehabilitation projects, depends on having a close working relationship with the NPS and the SHPO and a timely review of projects. This relationship includes preliminary review of projects in their early concept stage, timely review of applications for proposed project work, and on-site visits when needed. In looking for ways to improve this working relationship, developers pointed in particular to the need for more site visits by NPS and SHPO staffs. However, current funding for the program is not sufficient for the NPS and SHPOs to provide this increased level of service desired by applicants.

At present, NPS project review staff is supported by a combination of appropriated funds and revenues from fees paid by project sponsors. SHPO staffs are supported by a combination of grant funds from the NPS and

appropriated state funds. Fee revenues are not shared with the states. Current funding levels require that both the NPS and SHPOs carry out their program responsibilities with limited staffs that are pressed to complete their reviews within expected deadlines. This funding level simply does



Anderson Center, Mullins, SC



Welch Apartments, Muscatine, IA

not permit NPS and SHPO staffs to make many of the site visits requested by project owners and developers.

When the fee payment system was established more than 20 years ago, it created a sliding scale of fees. There is no fee for rehabilitation projects costing less than \$20,000. The fees begin at \$500 for projects over \$20,000, and rise to \$2,500, which is the amount charged for any project costing \$1 million or more. This fee structure has never been adjusted since then, either to account for inflation or to address the additional review costs for projects costing many millions of dollars. As a result, the review fees charged by the NPS do not reflect today's dollar values or the increased costs of the many extremely large and complex projects that invariably require considerably more staff time.

Higher fees could help pay for enhanced service from the NPS and the SHPOs, including additional funds for more visits to project sites. Most of the developers who spoke before the Committee stated their willingness to pay higher fees, if this would enable the NPS and SHPOs to provide increased service in reviewing their projects. Higher fees would also benefit smaller and rural projects in the increased service they would receive from the NPS and SHPOs. The developers also pointed out that additional revenue from fee payments could also enable the NPS to offer more training programs to provide more service and program guidance.



The NPS should review the existing fee structure to determine the extent to which increasing the fees for inflation and restructuring the scale could generate revenue sufficient to support a higher level of service, including increased NPS and SHPO travel to project sites to provide technical assistance. Further, the NPS, in consultation with SHPOs, should determine how best to share some portion of the increased fee revenues with SHPOs based on workloads or other particular needs. A new, increased fee structure, which is currently being developed, will be put into effect when the revised regulations, now being drafted, are published in one to two years.

7. The Committee finds that the current NPS policy for review of rehabilitation work within functionally-related, multiple-building complexes in single ownership inhibits use of the tax credit program for phased projects and for projects carried out by multiple long-term lessees on buildings within the complex. Current policy makes tax credits on such individual projects within the complex dependent for five years upon acceptability of any other rehabilitation work done elsewhere in the complex.

The Committee recommends that the NPS reevaluate and revise its current policy to lessen the dependence of projects within such a complex on each other for purposes of eligibility for the tax credits.

Increasingly, Federal Historic Rehabilitation Tax Credit projects are being considered for military bases that have been decommissioned as required by the Base Realignment and Closure (BRAC) process and for large functionally-related complexes that contain numerous buildings such as mills, hospitals and factories. Often these complexes, many in excess of 10 buildings, are in single ownership, and the most successful strategy for the overall rehabilitation of these underutilized structures is one where the owner of record leases out one or more buildings on a long-term basis. The various long-term lessees can then underwrite all rehabilitation expenses for their leased buildings and take advantage of the 20 percent credit.

Current NPS regulations [36 CFR Part 67.6 (b)(4)] require the owner of record in a multi-building, functionally-related complex to ensure that the rehabilitation of all the buildings included in the National Register listing meet the *Secretary of the Interior's Standards for Rehabilitation* if one or more of the structures is taking advantage of the credits. While on the face of it this seems reasonable, it is in fact a burden to the owner who may have undertaken a successful rehabilitation of a portion of the property and must now ensure that any and all long-term lessees also undertake rehabilitations that meet the *Secretary of the Interior's Standards*. If a long-term lessee subsequently undertakes an unsympathetic rehabilitation, the IRS may recapture the credit on the previously approved rehabilitation work. Likewise, if rehabilitation

work on a complex is stretched over a number of years, the overall project cannot receive final certification until all work is completed. If rehabilitation work is being undertaken by different entities, projects that are completed must keep their records open beyond the normal 36-month statute of limitations of IRS auditors.

In contrast, in historic districts and in complexes where individual buildings are separately owned, each rehabilitation project is reviewed on its own merits and is not subject to the uncertainty of whether other owners carry out projects that meet the *Standards*. The Committee heard during the presentations that some owners of large multi-building complexes had sold buildings within the complex outright to others to avoid being tied into a phased review or to projects that might not meet the *Standards*.

The NPS should review its policy on complexes, including military bases, to determine whether a more flexible interpretation of "functionally-related complexes" and "ownership" can be developed in conjunction with IRS regulations. The NPS should assess whether complexes can be treated as districts with separate contributing buildings being reviewed as separate projects and whether long-term lessees can be considered as owners for purposes of the tax credits. The Committee acknowledges that the integrity of

the National Register-listed resource must also be considered to protect complexes from extensive demolition.



San Diego Naval Training Center, San Diego, CA

Implementation of Recommended Tasks

Due to the importance of the actions identified in this report, the Committee strongly recommends that the NPS make their implementation a priority. The Committee acknowledges that these tasks are substantive and that undertaking them will require considerable time and effort on the part of the NPS and SHPOs. As administrator of the program, the NPS is responsible for providing the best possible service to program users while at the same time meeting the legal mandate to approve only projects consistent with the building's historic character. Accordingly, because of the overwhelmingly positive enhancements to the program that will result from these improvements, the Committee recommends that work on accomplishing these tasks should begin immediately. The Committee recommends that these tasks be completed by December 2007 to ensure the continued success of the program. In order to meet this deadline the Committee recommends that the NPS initiate consultation with its historic preservation partners immediately and complete this consultation by December 2006, after which time the NPS should begin to address its partners' recommendations and incorporate them into draft guidance by August 2007.



The Bay School, The Presidio, San Francisco, CA

NPS IMPLEMENTATION PLAN

Implementation of the tasks recommended by the NPSAB Committee on the Federal Historic Rehabilitation Tax Credit Program will be completed by December 31, 2007.

Special teams (1-3), composed of National Park Service staff and including historic preservation partners to the extent allowable by law, will be created to carry out implementation of these tasks. After initial consultation, NPS will continue to seek comments and recommendations on a regular basis from its historic preservation partners as it works on implementing these tasks.

- Team 1. Interpretation of the Standards - Specific Issues Identified by Committee:
Windows
Interior Treatments
New Additions and Related New Construction
Modern-day Requirements and New Technology
- Team 2. Education, Training and Written and Web-based Guidance on:
Interpreting the Standards for SHPO staff and program users, including project owners, architects and preservation consultants
Improving the Application process/Expanding program user base/Expanding availability of Preliminary Consultations
- Team 3. Reevaluate and revise NPS policy concerning functionally-related complexes
- Team 4. Oversight:
Ensure tasks recommended by Committee are completed and that remainder of tasks identified in the August 2004 report *Improving the Administration of the Federal Historic Rehabilitation Tax Credit Program: The National Park Service Response to Recommendations for Improvement* are completed.
Provide the NPSAB with updates on progress as circumstances warrant.

Schedule

September, 2006.....NPSAB Committee Final Report issued
October, 2006NPS meets to consult with its historic preservation partners to discuss scope of work and policy direction in implementing tasks recommended by the Committee
October, 2006 NPS establishes four teams to implement tasks following its consultation with historic preservation partners
November, 2006NPS teams analyze assigned tasks and begin to develop work plans
December, 2006.....NPS provides work plans to historic preservation partners for review and comment
January, 2007.....NPS teams begin work on implementing tasks
March, 2007.....NPS reports to annual NCSHPO meeting on status of teams' work
July, 2007NPS holds special workshop at biennial training for SHPO staff to discuss the guidance that is being proposed while it is still in draft, as well as to share the status of implementing the other tasks, and to seek comment and additional input from SHPO staff
August, 2007.....NPS prepares final draft guidance and provides to historic preservation partners for final comment
December, 2007 NPS implements all tasks recommended by the Committee and issues final guidance

OTHER ISSUES

In its August, 2004 report, *Improving the Administration of the Federal Historic Rehabilitation Tax Credit Program: The National Park Service Response to Recommendations for Improvement*, the NPS deferred to this Committee for a consideration of issues related to application of the *Secretary of the Interior's Standards for Rehabilitation*. However, the NPS did recognize a number of more procedural aspects of the program in which it could work with its partners to bring about improvements. Work on some of these items has already been completed, while work in other areas is still underway.

The Committee finds that the program will be improved by implementing the remaining 18 items -- the creation of this Committee having been the first item - previously identified in the NPS report. The Committee recommends that the NPS complete implementation of these 18 items as quickly as possible. Those items and their status as of the date of this report are as follows:

1. The NPS will consult with the National Conference of State Historic Preservation Officers (NCSHPO) to determine feasibility/schedule for more frequent regional SHPO meetings. *The NPS has informed all SHPOs that NPS staff is available to participate in statewide training and regional training. Status: Ongoing.*

2. The NPS will hold its biennial workshop for SHPOs and will consult with the Historic Preservation Development Council (HPDC) and NCSHPO about developer participation. *The NPS held its biennial workshop for SHPOs in July 2005. At the invitation of the NPS, the National Trust for Historic Preservation and representatives of the development community from the private sector participated in the workshop. This format will be used for future workshops. Status: Ongoing.*

3. The NPS will complete 12 new "Interpreting the Standards" Bulletins and post them on its Technical Preservation Services (TPS) website. *Status: Completed.*

4. The NPS will review "Interpreting the Standards" Bulletins issued earlier in the program which are now out of print to select approximately 45 to be adapted and posted on the TPS website. *NPS review revealed that less than 20 of the previously issued ITS Bulletins are suitable to be adapted into new ones. The NPS is currently preparing these for posting on its website. Status: To be completed October 2006.*

5. The NPS will make clear on its website that all guidance materials are available to the public, not just to SHPOs. *The NPS has reviewed its website and has determined that all guidance materials are available to the public. Status: Completed.*

6. The NPS will consult with its partners to determine if consolidating the two versions of the *Secretary of the Interior's Standards for Rehabilitation* would be desirable and feasible. *The Office of the Solicitor of the Department of the Interior has advised the NPS that the version of the Secretary of the Interior's Standards for Rehabilitation in the current regulations should not be changed. Instead, the revised regulations will include a statement that all versions of the Standards for Rehabilitation may be applied and will carry equal weight for purposes of the Federal Historic Rehabilitation Tax Credit Program. Status: Drafting of revised regulations in progress; revised regulations estimated to be published in one to two years.*

7. The NPS will convene a Task Force that includes SHPOs and the private sector to examine guidance material to ensure that all NPS guidance for the Federal Historic Rehabilitation Tax Credit Program refers only to rehabilitation treatments and not to restoration treatments. *The NPS met with the NCSHPO Task Force chaired by Jim Garrison (SHPO/AZ) in March 2006 and discussed this matter. The NCSHPO Task Force indicated it will begin to examine NPS guidance material for the program to ensure that it refers only to "rehabilitation" treatments and not to "restoration". Status: Completion contingent on NCSHPO Task Force schedule.*

8. The NPS will consult with the Office of the Solicitor of the Department of the Interior to devise and begin implementing a plan for posting information on appeals decisions on its website. *The NPS consulted with the Office of the Solicitor with regard to posting appeals decisions on its website. The most recent appeals decisions have been reformatted with sensitive personal*

information removed (Tax ID numbers, owners' names, etc.), and they have been posted on its website. New appeals decisions will be posted. Status: Completed.

9. The NPS will notify SHPOs that they may accept travel expense reimbursements for site visits to projects seeking rehabilitation tax credits, and will post this information on its website. *The NPS has notified SHPOs via e-mail that they may accept travel reimbursements for site visits. This topic was also discussed in depth at the July 2005 NPS/SHPO workshop. In addition, this information was included in the annual newsletter that the NPS sends out to SHPOs. Status: Completed.*

10. The NPS will post guidance questions on its website to assist SHPOs and property owners in documenting the pre-rehabilitation condition of a building. *The NPS has collected and reviewed existing state guidance on documenting the pre-rehabilitation condition of a building. The NPS is developing a standard format in preparation for posting the guidance on its website. Status: To be completed December 2006.*

11. The NPS will invite a NCSHPO task force to work with NPS staff to develop recommendations for the expansion of facilitated review and/or implementation of expedited review. Pending NCSHPO concurrence, the joint task force should report its findings at the NCSHPO annual meeting. *The NPS met with the NCSHPO task force in March 2006 to discuss this. The NCSHPO task force concluded that the existing facilitated review process works well and currently does not need to be expanded. Status: Completed.*

12. The NPS will finalize draft guidelines for preliminary project consultations, circulate for comment, disseminate and post on its website. *The NPS has finalized the guidance for preliminary project consultations. This guidance will be included in the annual newsletter that the NPS sends to SHPOs and will also be posted on its website. Status: To be completed December 2006.*

13. The NPS will consult with partners regarding changes to the Part 2 Application form, particularly about listing "character-defining features" and significant treatment issues. NPS will make recommendations for change, if any.

The NPS met with the NCSHPO task force in March 2006 to discuss this. Since SHPOs are the first point of contact with regard to listing properties in the National Register or potential rehabilitation tax credit projects, the NCSHPO task force concluded that developing a list of "character-defining" features, in consultation with National Register staff, and supplemental guidance on treatment issues should be left up to the discretion of individual SHPOs. Status: Completed.

14. The NPS will issue a letter to SHPOs to remind them that they are welcome to participate in appeal meetings, in writing, in person or by phone. *The NPS has provided this information via e-mail to SHPOs and announced it at the July 2005 NPS/SHPO workshop. It was also included in the annual newsletter that the NPS sends to SHPOs. Status: Completed.*

15. The NPS will consult with partners and the Office of the Solicitor of the Department of the Interior to determine the desirability and feasibility of some less formal process for the Chief Appeals Officer to seek advice other than from the NPS and SHPOs. *The NPS has consulted with the Office of the Solicitor. The Office of the Solicitor has clarified that the program regulations already provide the Chief Appeals Officer with this discretion. The NPS has reiterated this in its annual newsletter to SHPOs. Status: Completed.*

16. The Chief Appeals Officer will routinely grant any request for an "administrative hearing." The NPS will ensure that property owners are notified of this in letters denying certification of a rehabilitation project. *The Chief Appeals Officer grants all such requests for "administrative hearing." The NPS has revised the denial letter to include this information. Status: Completed.*

17. The NPS will consult with partners regarding the feasibility of electronic submittals of project applications. If agreed upon by its partners, the NPS will develop and disseminate guidelines for submitting applications electronically. *The NPS undertook a six-month pilot project study with five SHPOs to review the feasibility of submitting applications electronically. Preliminary data indicated that most states do not have the capability of receiving applications electronically.*

at this time. However, the NPS and those states that do have that capability currently receive a considerable amount of additional information sent electronically for projects already under review that have been submitted in traditional hard copy format. Status: Completed.

18. The NPS will consult with SHPOs concerned about the NPS practice of transmitting communications simultaneously to the SHPO and the project owner, and implement any changes necessary.

Each state has its own preferred means of communicating with NPS staff. In some states, all contact is through the SHPO; in others, the SHPO prefers that the NPS contact owners directly. In still others amendments to the Part 2 Application are sent concurrently to both the SHPO and the NPS. The NPS will follow the procedure according to each state's specified preference. (All applicants may, at any time, contact NPS staff directly to discuss projects.) Status: Completed.

FEDERAL HISTORIC REHABILITATION TAX CREDIT PROGRAM HIGHLIGHTS

The Tax Reform Act of 1976 established the first Federal incentive for private investment in the rehabilitation of income-producing historic properties.

The current program provides a 20% Federal Tax Credit to qualified projects based on eligible expenses associated with the rehabilitation.

The first tax incentive project was undertaken in 1977.

Since then, over 32,000 properties have been rehabilitated involving a capital investment of over \$36 billion.

Approximately 40% of projects involve some form of housing.

Approximately 350,000 housing units have been created or rehabilitated.

Approximately 80,000 of these units are for low- and moderate-income tenants.

Fiscal Year 2005:

Private investment for 1,100 approved rehabilitation projects was \$3.12 billion.

The average cost of projects receiving final certification was \$2.85 million.

The total number of housing units created or rehabilitated was 14,354.

The average number of local jobs created per project was 48.

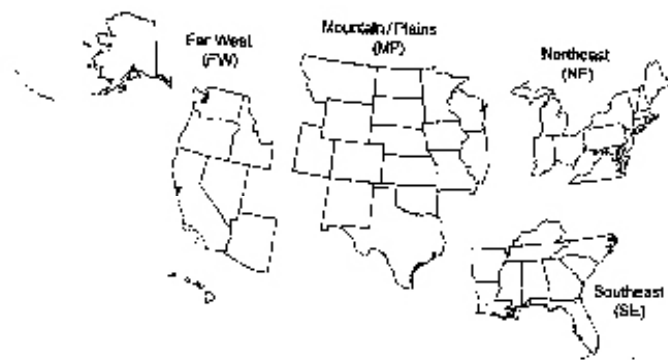
The estimated total number of local jobs created was 52,464.

The cost of the smallest project was approximately \$8,000.

The cost of the largest project was \$50,000,000.

Regional Share of investment for completed projects:

Northeast.....	48% - \$1,190,000,000
Southeast.....	16% - \$403,000,000
Mountains/Plains.....	23% - \$561,000,000
Far West.....	13% - \$337,000,000



States by Geographical Region



PSFS Building, Philadelphia, PA

APPENDIX

The Committee is aware that any recommendation regarding legislative changes to the Federal Historic Rehabilitation Tax Credit Program is outside its purview. However, the Committee would like to note several limitations of the tax laws that prevent some individuals from using the program that were discussed during the course of the meetings. These are as follows:

1. The five-year holding period for properties that have received the credit makes it difficult for some users to benefit from the program.
2. The requirement that investment equal the adjusted basis excludes smaller projects and some projects in high value real estate markets, as well as properties that have experienced high appreciation in value over the past several years.
3. The requirement that properties be income-producing excludes most condominium developments.
4. At 20 percent, the credit is too low to finance some projects.
5. "Passive loss" rules enacted in 1986 limit syndication financing for many smaller projects.
6. Alternative minimum tax rules may hamper an applicant's ability to claim the total amount of the credit.
7. Review period turnaround, 30 days for complete applications, is critical to projects and a deterrent in some private rehabilitation experiences.
8. Projects that use the federal tax credit for low-income housing sometimes encounter conflicts when also using the historic preservation tax credit because the requirements for the Low-Income Housing Tax Credit, which is a program administered by the Department of Housing and Urban Development (HUD), differ from the requirements for the Federal Historic Rehabilitation Tax Credit Program.
9. In some real estate markets with high land values, rehabilitation of a smaller historic building will create a lower economic return than constructing a larger new building.

It should be noted that the National Trust for Historic Preservation has drafted legislation that addresses some of the current disincentives that would, if acted upon, encourage more widespread use of the Federal Historic Rehabilitation Tax Credit.
